

SERVED: December 20, 1996

NTSB Order No. EA-4515

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 20th day of December, 1996

_____)	
LINDA HALL DASCHLE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14668
v.)	
)	
LEROY BOARDMAN,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on November 12, 1996, at the conclusion of an evidentiary hearing.¹ By that decision the law judge reversed an emergency order of the Administrator revoking respondent's airman and medical certificates for an alleged

¹An excerpt from the hearing transcript containing the initial decision is attached.

violation of section 67.20(a)(1) of the Federal Aviation Regulations ("FAR," 14 CFR Part 67).² For the reasons discussed below, we will grant the appeal and reverse the initial decision.³

In an Emergency Order of Revocation dated October 4, 1996, the Administrator alleged the following facts and circumstances concerning the respondent:

1. At all times material herein you held and you now hold Commercial Pilot Certificate Number 457682989.

2. On or about December 11, 1995, you applied for and were issued a second class medical certificate by a designated airman medical examiner.

2. [sic] On the December 11 application, you answered "no" to Question 18(w), History of nontraffic conviction(s) (misdemeanor and felonies).

3. On or about July 13, 1995 in the General Court of Justice, District Court Division for Rowan County, North Carolina, you were convicted of two counts of Indecent Liberties With Child, in violation of NCGS 14-202.1.

4. By answering "no" to Question 18(w), you knowingly made a fraudulent or intentionally false entry on the December 11, 1995, application.

The respondent did not dispute the facts alleged by the Administrator in support of his revocation order, but maintained

²FAR § 67.20(a)(1) provides as follows:

§ 67.20 **Applications, certificates, logbooks, reports, records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part[.]

³The respondent, by counsel, has filed a reply opposing the appeal.

that his admittedly incorrect "no" answer on the application was the result of an inadvertent mistake, born of haste, not an effort to hide the convictions from the Administrator. The law judge accepted the respondent's account of the matter.⁴ We do not.⁵ We conclude, rather, that the respondent's testimony on the point is inherently incredible.

Before discussing our reasons for believing that the respondent purposefully falsified his medical certificate application, some comment is warranted on the defense the law judge concluded exonerated the respondent of the intentional falsification charge; namely, that accountability for erroneous answers on the application could be avoided if the respondent did not actually read the questions to which they corresponded. We are troubled by such a ruling.

The very act of submitting a medical certificate application invites reliance by the FAA on the responses it contains, and the nature of the responses, every airman can be fairly presumed to appreciate, dictates whether the certificate will be issued. It

⁴The law judge understood respondent to testify that, without reading the individual questions, he used his prior year's medical application, provided to him at the doctor's office, as a guide for completing the one at issue in this proceeding, simply checking either the yes or no block as he had done previously with respect to the applications' efforts to elicit information as to the applicant's medical history and his "Conviction and/or Administrative Action history."

⁵Aside from our belief that the law judge's decision rests on an erroneous analysis of the respondent's testimony, the decision is also flawed because it reverses the Administrator's revocation of the medical certificate the respondent's own evidence establishes was issued on the basis of, at best, incomplete information concerning a material matter.

seems to us that an airman who, knowing this, tenders an application that turns out to have a wrong answer to one or more of many questions he freely chose not even to read, much less to thoughtfully answer, cannot reasonably argue that he lacked the intent to give false information, for the submission of inaccurate information is a natural and foreseeable consequence of completing an application in a manner that essentially guarantees its unreliability.⁶ We think that such an airman, having acted in a manner that could be viewed as evincing a willful disregard of the truth or falsity of the information officially submitted and, therefore, in a way reflecting contempt for the airman medical certification process, should be determined to have intended that whatever answer he gave be utilized in the review of his qualifications.⁷ Allowing the airman later to assert that a different answer would have been given had he read the questions (and, in the process, to disavow a signed assurance to the effect that they had been perused) would promote a kind of "heads-I-win, tails-you-lose" fraud in

⁶We recognize that an applicant could inadvertently mismark or overlook a question on medical history that he misread or thought he had read but had not. Our discussion above does not apply to such individuals. It applies, rather, to those who would have their medical histories evaluated on the basis of an application they know has not been conscientiously prepared.

⁷Medical certificate applications do, after all, contain a signed declaration that "all statements and answers provided by me on this application are complete and true to the best of my knowledge, and I agree that they are to be considered part of the basis for issuance of any FAA certificate to me." Although the respondent put his signature immediately beneath this language on the application at issue in this proceeding, he denies having read it.

filling out applications that we are reluctant to excuse or reward by accepting the kind of defense on which the respondent in this proceeding rests.⁸

Notwithstanding the foregoing views, we need not and do not, in the context of this case, base our judgment that respondent committed an intentional falsification on his submission of material medical information that was unjustifiably in error.

The respondent did not actually testify that he did not read the application, at least insofar as question 18.w. is concerned.⁹ He testified in effect that he did not read the question closely: A. "I did not read it. I just glanced over it." Q. "Did you see any part of the question?" A. "I seen history and traffic." Tr. at 104, 114. In other words, respondent maintained that when he took a quick look at the question "History of nontraffic conviction(s) (misdemeanors or felonies)," he saw only part of the inquiry.¹⁰ We review below

⁸An individual who has discharged his obligation to furnish reliable, personal medical information in such an untrustworthy fashion has obtained by trick any medical certificate thereafter received and, at the same time, he has called in question his qualification to hold any airman certificate, since an individual possessing the care, judgment, and responsibility required of a certificate holder would not file a medical certificate application whose truthfulness was in doubt.

⁹Question 18 broadly seeks medical information about more than twenty items related to an airman's health and behavioral history.

¹⁰During direct questioning by his attorney the respondent stated that he checked "no" since he had no traffic record. However, when the law judge later asked respondent if he had ever been cited for a traffic violation, he answered "Well, I've had four tickets in my whole life, sir." Tr. at 111. Three of them involved moving violations. Neither the law judge nor counsel

some of the factors which persuade us that respondent read the entire question and decided to answer it falsely.

The respondent, who says he spent no more than one to two minutes filling out the medical certificate application, maintains that his lack of care in reading it was the product of his desire to get to work as soon as he could after having the medical examination. However, aside from the fact that there is nothing in the record to suggest that there was any specific task or project at respondent's place of employment that required his immediate or prompt attention, there is no showing that the amount of time spent completing the application would have had any direct bearing on how long he would have to spend at the doctor's office, which by his own account usually took from one to three hours. These circumstances indicate, at a minimum, that respondent, who conceded at the hearing that he is aware of the importance of accuracy and truthfulness in filling out such a form (Tr. at 113), had no particular reason to speed through the application without reading it carefully, and that he had no basis for believing that taking as much time as would be necessary to complete it properly would have any significant impact on when he would be able to go to work. Without a persuasive reason for hurrying through the application, the credibility of respondent's insistence that he did not read it would be subject to considerable doubt, even if he did not have a

(..continued)
for the Administrator asked respondent to explain these seemingly contradictory replies.

strong motive to claim that he had not read the question he answered incorrectly.¹¹

The Administrator's position, in effect, is that the respondent's convictions were so recent, occurring only about five months before the medical application was filled out, and so momentous that it strains credulity to accept respondent's assertion that his failure to report them on the application was an innocent mistake, rather than a purposeful effort to keep the information from the Administrator.¹² While we are in basic agreement with the Administrator on his point, we do not find it necessary to find that respondent must have had the convictions on his mind when he filled out the medical certificate application or that the existence of these relatively fresh convictions for such major criminal infractions precludes a

¹¹Another factor relevant to respondent's claim that he did not take the time to read the application carefully is the fact that the application at some later date was returned to him by mail because he had not marked either yes or no to Question 18.v., which is immediately adjacent and to the left of Question 18.w. on the application form. Question 18.v. asks an applicant to provide information concerning, inter alia, any history he may have of convictions for driving while intoxicated or impaired by alcohol or drugs. Respondent implies, without directly so stating, that despite this second opportunity to look over the application, presumably at his leisure, he did not have enough time to do more than simply mark that question and mail the application back because he was only given three days to do so. Unlike question 18.v., which has multiple parts and should probably be broken down into several separate inquiries, question 18.w. is short and uncomplicated.

¹²Respondent conceded at the hearing that the criminal matter was "the biggest thing I ever had happen in my life" (Tr. at 113). For the felony convictions, respondent received a three-year sentence that was suspended on condition that he submit to supervised probation for five years, receive sex offender counseling, and pay restitution to the victim.

finding that the respondent could not have misread a question that sought their discovery. Rather, it is sufficient to note that the recency of the convictions and their serious character reduce still further the likelihood that respondent's explanation for not supplying the correct answer is truthful.

We find no merit in the respondent's contention that he had no reason to conceal these convictions from the Administrator because, among other things, they were matters of public record that had received some local notoriety and respondent did not think they would affect his eligibility for a medical certificate.¹³ That some publicity, over which respondent had no control, had already occurred does not establish that respondent

would have no interest in minimizing any further spread of information about the crimes. Moreover, respondent's stated belief that the convictions would not be relevant to his obtaining a medical certificate appears to be based on no more than his own assessment of the issue. He therefore could be said to have had motive enough to answer the question falsely rather than run the risk that he was wrong about the possible consequences of revealing the convictions to the Administrator on his application.

We think the lack of any plausible justification for respondent's not reading the application with care and the

¹³We are also unpersuaded that the fact that respondent may have informed several individuals, including his employer and a pilot student of his, of the impending convictions compels any judgment that respondent had no reason to attempt to keep others, including the Administrator, from learning of the matter.

incentive an airman in his circumstances would have for not disclosing information that presumptively would be significant to the certification decision combine in this case to foreclose believing respondent when he says he did not read all of Question 18.w.¹⁴ Stated differently, we conclude, in the context of all of the factors we have discussed, that the possibility that the respondent misread the subject question is too remote to support a decision in his favor. The contrary judgment of the law judge will, therefore, be overturned. See e.g., Administrator v. Pullaro, NTSB Order EA-3495 at 3 (1992) ("Board will reverse the law judge's findings when a witness' testimony is 'inherently incredible.'"), and cases there cited.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is reversed; and
3. The Administrator's Emergency Order of Revocation is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and BLACK, Members of the Board, concurred in the above opinion and order. GOGLIA, Member, did not concur.

¹⁴In addition, we find it exceptionally difficult to believe that an airman could fill out a medical certificate application every year for twenty plus years and not be keenly aware of their requirement that information about convictions of any kind be reported.